

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>MISTI DAWN TOLLIVER,</b>	)	
<b>Petitioner,</b>	)	<b>Civil Action No. 7:14cv00120</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>MARK HERRING,</b>	)	<b>By: Michael F. Urbanski</b>
<b>Respondent.</b>	)	<b>United States District Judge</b>

Petitioner Misti Dawn Tolliver, a Virginia inmate proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging her 2012 convictions in the Pulaski County Circuit Court. The court finds that Tolliver has not fully exhausted her state court remedies before filing this federal habeas petition and, therefore, dismisses her petition without prejudice.

**I.**

On March 2, 2012, the Pulaski County Circuit Court convicted Tolliver of six counts of possessing a burglary tool, in violation of Va. Code 18.2-94, and thirteen counts of tampering with a vending machine, in violation of Va. Code 18.2-152. The court sentenced Tolliver to nineteen years incarceration, with all nineteen years suspended, and four years of supervised release. According to her petition, and confirmed by state court records found online, Tolliver has not yet pursued her criminal appeal or filed a petition for writ of habeas corpus in any state court. Tolliver filed her federal habeas petition on March 20, 2014.

**II.**

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court

must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row felon ultimately must present her claims to the Supreme Court of Virginia and receive a ruling from that court before a federal district court may consider her claims. See Va. Code § 8.01-654. In this case, it is clear that Tolliver has yet to pursue her habeas claims in the Supreme Court of Virginia. Accordingly, the court finds that Tolliver has not fully exhausted her state court remedies before filing her federal habeas petition.

### III.

Based on the foregoing, the court dismisses Tolliver's habeas petition without prejudice as unexhausted.

Entered: March 31, 2014

*/s/ Michael F. Urbanski*

Michael F. Urbanski  
United States District Judge